

**KR PLANNING
URBAN PLANNING
07545264252**

10 September 2024

London Borough of Richmond
Civic Centre
44 York Street
Twickenham
TW1 3BZ

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990

APP REFERENCE: 24/1563/GPD26

3-4 NEW BROADWAY HAMPTON HILL TW12 1JG

This Lawful Development Certificate application is submitted on behalf of our client and site owner, Mr Dolan, pursuant to Section 192 of the Town and Country Planning Act 1990. The proposal seeks to establish the lawfulness of the proposed use of the building in respect of the implementation of planning permission 24/1563/GPD26

In line with national and local validation requirements, the following documents are enclosed:

- Application form
- CIL form
- Covering Letter (this document containing the Applicant's statement demonstrating the lawfulness of the proposed use)
- Site Location Plan

The Site

The site is pair of retail units positioned in the centre of a parade of six commercial units located on the southern side of Hampton Road located close to Hampton Hill Town Centre. The parade of shops is known as New Broadway. The site benefits from two separate street level entrances (of which only one is currently use) and which previously served 2 x one bed dwellings which is what the applicant it proposing to reinstate.

The site is PTAL 2 but is within a seven minute walk of Fulwell Station which has regular and direct services into central London. Directly outside the site is a bus station which offers direct services to Heathrow, Teddington and Hampton Court Palace. In terms of parking, the site is not located within a CPZ although there are two parking bays within fifty metres of the site which can accommodate three cars and which restrict parking to 30 minutes.

The site benefits from both full planning permission to convert the space as part of a larger comprehensive redevelopment, along with separate planning permission to convert the retail units into 2 x 1 bed apartments. One expired permission crystallised in exactly the same fashion as that the subject of this application.

Legal Framework & Guidance

The application itself is made pursuant to S192(1)(b) of the TCPA 1990, which allows for a certificate to be issued by the Local Planning Authority to determine if a proposed operation (in this instance the continued implementation of 21/03811/PANOTH would be lawful.

When an application for a CLOPUD is made, the Council is required to consider the lawfulness of the use at the time of the application and to issue a certificate if it is satisfied that it should do so. Lawfulness is defined by S192(2) of the Act as follows:
the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application

Under Article 7 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“GDPO”), the relevant date when the determination period runs from for a prior approval application is one of the following:

1. Within the period specified in the relevant provision of Schedule 2 of the GDPO; or
2. Where no period is specified, within a period of 8 weeks beginning with the day immediately following that on which the application is received by the authority, or
3. Within a longer period than is referred to in paragraph (a) or (b) as may be agreed by the applicant and the authority in writing.

The relevant provision of Schedule 2 of the GDPO is Schedule 2, Part 3, Class MA (Change of use from Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses)), which requires a prior approval application to be made for such change of use. This part of the schedule does not set out when the determination period runs from and it is our understanding there was no agreement between the parties to extend the determination period. Therefore, in applying article 7, no.2 above is applicable and the application must be determined within a period of 8 weeks beginning with the day after the local authority received the application. This time period is also further reiterated in Paragraph W(11)(c) of Schedule 2, Part 3, which relates to when a development can begin. Paragraph W(11) states the following:

“(11) The development must not begin before the occurrence of one of the following—
(a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;
(b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or
(c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.”

Sub-paragraph 2 relates to the documents which must accompany the prior approval application. The documents to be included for a prior approval application under class MA are:

- A written description of the proposed development;
- A site plan;
- A statement specifying the net increase in dwelling-houses proposed;
- A floor plan (with dimensions);
- Developer's contact address;
- Developer's email address; and
- Site-specific flood risk assessment (if Environment Agency is to be contacted).

Caselaw has also provided some clarification on the determination period. In the case of *Murrell & Anor Secretary of State for Communities and Local Government [2010]*, the judge in paragraph 34 confirmed that the determination date for prior approval applications runs from the date of receipt (opposed to any later validation date).

The strictness of the approach is outlined by the Court of Appeal's decision in *Murrell v SSCLG [2010] EWCA Civ 1367*. In *Murrell*, at [26]-[43], the Court of Appeal held that:

- (1) The GPDO does not make the running of time dependent on a decision by an LPA to accept an application as valid;*
- (2) Whether an application is valid is an objective question of law;*
- (3) The application for a determination as to whether prior approval is required does not need to be in any particular form and does not need to be accompanied by anything more than what is prescribed by the GPDO. No form is stipulated in para W(2) as listed above;*
- (4) It is not mandatory to use a local planning authority's standard form or provide information beyond that prescribed in the GPDO.*

Applying *Murrell*, in the present case:

- (1) The application material including the fee was submitted via the Planning Portal electronically inside business hours on 18 June 2024, so it is treated as received*

- on this day (see s.336(4A) TCPA 1990 & Art 2(9) GPDO). Consequently the 56 day period began on the day after receipt of the Application i.e. 19th June 2024*
- (2) The Application provided everything required by paragraph W(2) on 18/06/2024 and it should have been registered from this date.*
 - (3) The LPA attempted to “invalidate” the application by letter dated 25 June 2024, but in response, the Agent noted that Prior Approval applications were not subject to validation and that the 56 days were already counting.*
 - (4) As recorded on their Portal, the LPA gave the start date for the application of 25th June 2024 but there was no statutory basis for this date*
 - (5) Despite an offer from the applicant via email, there was no agreement between the parties to extend the determination period*
 - (6) The Council’s decision was emailed on 19th August 2024 at 16:29 . Therefore the ‘decision’ was conveyed to the Appellant outside the 56 days, as required by Paragraph W of the GPDO 2015.*

In the Applicant’s view, supported by the above analysis, the planning permission granted by the GPDO for the change of use of the Property from Class E to residential would accrue or crystallise on the receipt of a favourable response from the Council to an application for prior approval or if the Council were to fail to make a determination within a period of 56 days beginning with the date on which it received the application.

Given that the Council failed to notify the Applicant of their determination within 56 days the permitted development right accrued or crystallised on expiry of the 56 day period on 14 August 2024. Again this point is clearly established by Court of Appeal authority

Summary of Lawfulness

In this case we can demonstrate the following:

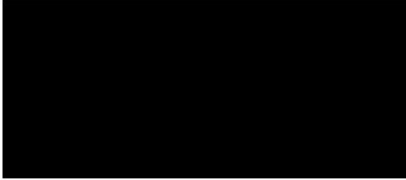
- i. That an application was made to LB of Richmond on 18 June 2024
- ii. The 56 days count begins the business day after receipt.
- iii. No determination was made by the London Borough of Richmond within 56 days of the day after receipt
- iv. The deemed consent therefore crystallised at close of business on 14 August 2024

- v. The decision notice issued by the Borough on 19 August 2024 has no weight and is unenforceable

Conclusion

We believe that the evidence we have produced has discharged the onus on the applicant to prove, on the balance of probabilities, that this claim for the Certificate is correct. The evidence is both clear and unambiguous, and trust that a favourable decision can be issued.

Yours Faithfully



Kieran Rafferty

BA(URP)